

APPEAL NO. 93516

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city) Texas, on April 23, 1993, with the record closing on May 5, 1993, (hearing officer)., presiding as hearing officer. He determined that the appellant, claimant herein, sustained an injury in the course and scope of his employment on (date of injury); that the employer had actual knowledge of the injury within the time provided by law; that the claimant did not elect to pursue relief outside the workers' compensation system; and that the claimant failed to establish that he had a disability as a result of the injury. The hearing officer ordered the respondent, carrier herein, to pay medical benefits as required by the statute. No temporary income benefits were ordered. Claimant appeals the determination that he did not have an injury that resulted in a disability and the denial of temporary income benefits for specified periods of time. The carrier asserts that the request for review was not timely filed and otherwise urges affirmance of the hearing officer's decision.

DECISION

Finding that the request for review was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final pursuant to the provision of Article 8308-6.34(h), Article 8308-6.41(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(3) (Rule 143.3(a)(3)).

Article 8308-6.41(a) provides that a party desiring to appeal the decision of the hearing officer must file its appeal with the Commission no later than 15 days after receiving the decision. The evidentiary portion of this contested case hearing closed on May 5, 1993. The hearing officer signed the decision on May 21, 1993. Internal Commission records disclose that the decision was mailed on May 28, 1993.

In his request for review, post-marked June 21, 1993, the claimant did not indicate the date he received the hearing officer's decision or in any way address the timeliness issue. Thus, pursuant to Rule 102.5(h), receipt is presumed to have been on June 2, 1993, five days after mailing. Applying the five day rule to the date of mailing plus the 15 days for filing an appeal, we conclude that the last day to invoke the jurisdiction of the Appeals Panel was June 17, 1993. See Rule 102.3(a)(3). The request for review is postmarked June 21, 1993, and was received on June 23, 1993. It is, therefore, untimely.

The request for review having been determined to be untimely, the jurisdiction of the Appeals Panel has not been properly invoked. See Texas Workers' Compensation Commission Appeal No. 92099, decided May 21, 1992. Accordingly, the decision of the hearing officer has become final.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge